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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 29, 2020

SEAN F. MCAVOY, CLERK

6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,
9
10 Plaintiff,

NO. 1:20-CR-2018-SAB

11 v.

PLEA AGREEMENT

12 FERNANDO GUSTAVO
13 CASTANEDA-SANDOVAL,
14
15 Defendant.

16 Plaintiff United States of America, by and through William D. Hyslop, United
17 States Attorney, and Ian L. Garriques, Assistant United States Attorney, for the Eastern
18 District of Washington, and Defendant Fernando Gustavo Castaneda-Sandoval
19 (hereinafter "Defendant"), and the Defendant's counsel, Alex B. Hernandez III, agree to
20 the following Plea Agreement:

21 1. Guilty Plea and Maximum Statutory Penalties:

22 The Defendant agrees to plead guilty to the Indictment, charging the Defendant
23 with Escape from Custody, in violation of 18 U.S.C. § 751(a).

24 The Defendant understands that the maximum statutory penalty for Escape from
25 Custody, in violation of 18 U.S.C. § 751(a), is 5 years; a fine of \$250,000; or both; a term
26 of supervised release of not more than 3 years; and a \$100 special penalty assessment.

27 The Defendant understands that a violation of a condition of supervised release
28 carries an additional penalty of re-imprisonment for all or part of the term of supervised

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1 release without credit for time previously served on post-release supervision.

2 2. Video Proceedings:

3 Pursuant to this Court's General Order 20-101-3 (eff. March 30, 2020) and Section
4 15002(b) of the CARES Act, Pub. L. No. 116-136 (H.R. 748) (eff. March 27, 2020), the
5 Defendant agrees to the use of video conferencing (or telephone conferencing if video
6 conferencing is not reasonably available) for any eligible hearings listed in Section
7 15002(b) of the CARES Act, specifically detention hearings, initial appearances,
8 preliminary hearings, waivers of indictment, arraignments, supervised release revocation
9 proceedings, pretrial release revocation proceedings, and felony pleas and sentencings.

10 3. Court is Not a Party to the Agreement:

11 The Court is not a party to this Plea Agreement and may accept or reject this Plea
12 Agreement. Sentencing is a matter that is solely within the discretion of the Court. The
13 Defendant understands that the Court is under no obligation to accept any
14 recommendations made by the United States and/or by the Defendant; that the Court will
15 obtain an independent report and sentencing recommendation from the U.S. Probation
16 Office; and that the Court may, in its discretion, impose any sentence it deems
17 appropriate up to the statutory maximums stated in this Plea Agreement.

18 The Defendant acknowledges that no promises of any type have been made to the
19 Defendant with respect to the sentence the Court will impose in this matter. The
20 Defendant understands that the Court is required to consider the applicable sentencing
21 guideline range, but may depart upward or downward under the appropriate
22 circumstances.

23 The Defendant also understands that should the sentencing judge decide not to
24 accept any of the parties' recommendations, that decision is not a basis for withdrawing
25 from this Plea Agreement or a basis for withdrawing this plea of guilty.

26 4. Waiver of Constitutional Rights:

27 The Defendant understands that by entering this plea of guilty the Defendant is

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1 knowingly and voluntarily waiving certain constitutional rights, including:

- 2 a. The right to a jury trial;
- 3 b. The right to see, hear and question the witnesses;
- 4 c. The right to remain silent at trial;
- 5 d. The right to testify at trial; and
- 6 e. The right to compel witnesses to testify.

7 While the Defendant is waiving certain constitutional rights, the Defendant
8 understands the Defendant retains the right to be assisted through the sentencing and any
9 direct appeal of the conviction and sentence by an attorney, who will be appointed at no
10 cost if the Defendant cannot afford to hire an attorney.

11 5. Elements of the Offense:

12 The United States and the Defendant agree that in order to convict the Defendant
13 of Escape from Custody, in violation of 18 U.S.C. § 751(a), as charged in the Indictment,
14 the United States must prove beyond a reasonable doubt the following elements:

15 First, the Defendant was in the custody of Yakima County Jail at the direction of
16 the Attorney General;

17 Second, the Defendant was in custody by virtue of an order of detention issued by
18 the United States District Court for the Eastern District of Washington; and

19 Third, the Defendant knowingly and voluntarily left custody without permission.
20 9th Cir. Crim. Jury Instr. 8.44 (2010, modified).

21 6. Factual Basis and Statement of Facts:

22 The United States and the Defendant stipulate and agree that the following facts
23 are accurate; that the United States could prove these facts beyond a reasonable doubt at
24 trial; and these facts constitute an adequate factual basis for the Defendant's guilty plea:

25 On December 22, 2016, Defendant Fernando Gustavo Castaneda-Sandoval was
26 sentenced to a term of 41.5 months of confinement and 3 years of supervised release by
27 the United States District Court for the Eastern District of Washington in Case No. 1:15-
28 CR-02037-LRS-1. On April 13, 2018, the Defendant's supervised release commenced

1 and was set to expire on approximately April 12, 2021.

2 On October 29, 2019, during the pendency of ongoing revocation proceedings, the
3 U.S. Probation Office submitted a Petition for Warrant or Summons for Offender Under
4 Supervision. The new Petition alleged six new violations of supervised release
5 (Violation Nos. 10-15). On the same day, United States Senior District Court Judge
6 Lonny R. Suko ordered the issuance of an arrest warrant.

7 The Defendant was subsequently arrested on January 29, 2020. On January 30,
8 2020, the Defendant appeared in magistrate court for an initial appearance on the October
9 29, 2019 Petition. At the hearing, United States Magistrate Judge John T. Rodgers
10 ordered that the Defendant be detained in the custody of the United States Marshals
11 Service – the Attorney General’s designated representative of the Attorney General –
12 pending Defendant’s supervised release revocation hearing. Defendant was detained at
13 the direction of the U.S. Marshals Service at the Yakima County Jail pending trial.

14 On March 23, 2020, Defendant and several other inmates housed at the Yakima
15 County Jail escaped from the jail through a broken a door, jumping over a security fence,
16 and fleeing the area. Defendant knowingly and voluntarily escaped from custody at the
17 jail without permission. A federal criminal complaint and warrant were issued for
18 Defendant’s arrest based on his escape from federal custody. After a manhunt, several
19 U.S. Marshals Service task force officers located Defendant at a residence in Wapato,
20 WA. Defendant appeared at the door and slammed it shut, yelling something to the
21 effect: “F--- y-- b-----s.” Defendant also indicated, something to the effect that he would
22 burn the house down and not go back to jail. Officers called for backup and used their
23 PA system to try to gain Defendant’s cooperation. After about an hour and half stand-
24 off, officers were able to successfully negotiate a peaceful surrender. Defendant exited
25 the residence and was taken into custody without further incident. He was transported
26 back to the Yakima County Jail for an initial appearance on the escape complaint and for
27 further proceedings in his revocation case.

28 This statement of facts does not preclude either party from presenting and arguing,
Plea Agreement – 4

1 for sentencing purposes, additional facts which are relevant to the guideline computation
2 or sentencing, unless otherwise prohibited in this agreement.

3 7. The United States Agrees:

4 a. Not to File Additional Charges:

5 The United States Attorney's Office for the Eastern District of Washington agrees
6 not to bring any additional charges against the Defendant based upon information in its
7 possession at the time of this Plea Agreement and arising out of Defendant's conduct
8 involving illegal activity charged in the Indictment, unless the Defendant breaches this
9 Plea Agreement any time before or after sentencing.

10 8. United States Sentencing Guideline Calculations:

11 The Defendant understands and acknowledges that the United States Sentencing
12 Guidelines (hereinafter "U.S.S.G.") are advisory to this case and that the Court will
13 determine the Defendant's applicable sentencing guideline range at the time of
14 sentencing.

15 a. Base Offense Level:

16 The United States and the Defendant agree that pursuant to U.S.S.G.
17 § 2P1.1(a)(1), the Base Offense Level is thirteen (13).

18 b. Specific Offense Characteristics:

19 The United States and the Defendant make no agreement as to whether any
20 specific offense characteristics apply.

21 9. Acceptance of Responsibility:

22 If the Defendant pleads guilty and demonstrates a recognition and an affirmative
23 acceptance of personal responsibility for the criminal conduct; provides complete and
24 accurate information during the sentencing process; does not commit any obstructive
25 conduct; accepts this Plea Agreement; and enters a plea of guilty pursuant to this Plea
26 Agreement, the United States will recommend that the Defendant receive a two (2) level
27 reduction for acceptance of responsibility, and if the Defendant's adjusted offense level is
28 sixteen (16), or greater, the United States will move for a one (1) level reduction for

1 timeliness. *See* U.S.S.G. §§ 3E1.1(a) and (b).

2 The Defendant and the United States agree that the United States may at its option
3 and upon written notice to the Defendant, not recommend a three (3) level downward
4 reduction for acceptance of responsibility if, prior to the imposition of sentence, the
5 Defendant is charged or convicted of any criminal offense whatsoever or if the Defendant
6 tests positive for any controlled substance.

7 10. Criminal History:

8 The United States and the Defendant understand that the Defendant's criminal
9 history computation ultimately will be determined by the Court after review of the
10 Presentence Investigation Report. The United States and the Defendant have made no
11 agreement and make no representations as to the criminal history category, which shall be
12 determined after the Presentence Investigation Report is completed.

13 11. Incarceration:

14 The United States and the Defendant agree that the United States will recommend
15 that the Court impose a sentence of imprisonment at the low-end of the applicable
16 Guidelines sentencing range and that the Defendant may ask for any legal sentence. The
17 parties further agree to recommend that any sentence of imprisonment be imposed
18 concurrently to any revocation term of imprisonment imposed for Defendant's pending
19 supervised release violations in Case No. 1:15-CR-02037-LRS.

20 12. Criminal Fine:

21 The United States and the Defendant are free to make whatever recommendation
22 concerning the imposition of a criminal fine that they believe is appropriate.

23 13. Supervised Release:

24 The United States and the Defendant agree to recommend that the Court impose a
25 term of supervised release of three (3) years and to recommend that the Court impose the
26 statutorily mandated, standard, and suggested special conditions of supervised release
27 recommended by the U.S. Probation Office and as set forth in the Presentence

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Investigation Report.

14. Pending Supervised Release Violations in Case No. 1:15-CR-02037-LRS:

As part of this plea agreement, Defendant agrees that he will admit supervised release violations 1 through 16, filed at ECF Nos. 83, 91, 95, 109, and 120, in his prior criminal case before this Court (Case No. 1:15-CR-02037-LRS). After Defendant is sentenced based on his guilty plea to the Indictment in Cause No. 1:20-CR-2018-SAB, the United States and Defendant agree, in regard to supervised release violations 1 through 16, that: (1) the United States will recommend that the Court impose a sentence of imprisonment at the low-end of the applicable Guidelines sentencing range and Defendant may ask for any legal sentence, and (2) the sentence of imprisonment for said supervised release violations be imposed concurrently to any sentence of imprisonment for Defendant's guilty plea to the Indictment in Cause No. 1:20-CR-2018-SAB.

15. Mandatory Special Penalty Assessment:

The Defendant agrees to pay the \$100 mandatory special penalty assessment to the Clerk of Court for the Eastern District of Washington, at or before sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United States before sentencing as proof of this payment.

16. Restitution:

The parties agree that restitution may be required depending on any substantiated restitution claims provided to the Court at sentencing or any restitution hearing. *See* 18 U.S.C. §§ 3663, 3663A, and 3664. Further, pursuant to 18 U.S.C. § 3663(a)(3), the Defendant understands and agrees that he may be ordered to pay restitution to the Yakima Department of Corrections (YDOC) if such restitution claims are substantiated by a preponderance of the evidence. With respect to restitution, the parties agree to the following:

(a) Restitution Amount and Interest

Pursuant to 18 U.S.C. §§ 3663, 3663A and 3664, the parties are free to argue whether the Court should order restitution to YDOC, and the applicable amount thereof,

1 which is to be determined at or before sentencing. The interest on this restitution amount
2 should be waived.

3 (b) Payments

4 The parties agree the Court may set a restitution payment schedule based on his
5 financial circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). That being said, Defendant
6 agrees to pay not less than 10% of his net monthly income towards his restitution
7 obligation.

8 (c) Treasury Offset Program and Collection

9 Defendant understands the Treasury Offset Program collects delinquent debts
10 owed to federal agencies. If applicable, the TOP may take part or all of Defendant's
11 federal tax refund, federal retirement benefits, or other federal benefits and apply these
12 monies to Defendant's restitution obligations. *See* 26 U.S.C. § 6402(d); 31 U.S.C. §
13 3720A; 31 U.S.C. § 3716.

14 Defendant also understands the United States may, notwithstanding the Court-
15 imposed payment schedule, pursue other avenues to ensure the restitution obligation is
16 satisfied, including, but not limited to, garnishment of available funds, wages, or assets.
17 *See* 18 U.S.C. §§ 3572, 3613, and 3664(m). Nothing in this acknowledgment shall be
18 construed to limit Defendant's ability to assert any specifically identified exemptions as
19 provided by law, except as set forth in this Plea Agreement.

20 (d) Notifications

21 The Defendant agrees to notify the Court and the United States of any material
22 change in his economic circumstances (e.g., inheritances, monetary gifts, changed
23 employment, or income increases) that might affect his ability to pay restitution. *See* 18
24 U.S.C. § 3664(k). This obligation ceases when the restitution is paid-in-full.

25 The Defendant agrees to notify the United States of any address change within 30
26 days of that change. *See* 18 U.S.C. § 3612(b)(F). This obligation ceases when the

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1 restitution is paid-in-full.

2 17. Payments While Incarcerated:

3 If the Defendant lacks the financial resources to pay the monetary obligations
4 imposed by the Court, the Defendant agrees to earn the money to pay toward these
5 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
6 Program.

7 18. Additional Violations of Law Can Void Plea Agreement:

8 The Defendant and the United States agree that the United States may at its option
9 and upon written notice to the Defendant, withdraw from this Plea Agreement or modify
10 its recommendation for sentence if, prior to the imposition of sentence, the Defendant is
11 charged or convicted of any criminal offense whatsoever or if the Defendant tests
12 positive for any controlled substance.

13 19. Hyde Amendment Waiver:

14 The Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A
15 (Statutory Note), for attorney's fees and other litigation expenses arising out of the
16 investigation or prosecution of this matter.

17 20. Effect on Immigration Status:

18 The Defendant, recognizes that pleading guilty may have consequences with
19 respect to his immigration status if he is not a citizen of the United States. Under federal
20 law, a broad range of crimes are removable offenses, including the offense to which the
21 Defendant is pleading guilty. Indeed, due to the charge to which Defendant is pleading
22 guilty, removal is presumptively mandatory. Removal and other immigration
23 consequences are the subject of a separate proceeding, however, and Defendant
24 understands that while deportation and/or removal appears to be a virtual certainty, no
25 one, including her attorney or the Court, can predict with absolute certainty the effect of
26 his conviction on his immigration status. Defendant nevertheless affirms that he wants to
27 plead guilty regardless of any immigration consequences that his plea may entail, even if
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1 automatic removal from the United States is a virtual certainty.

2 21. Appeal Rights:

3 The Defendant expressly waives his right to appeal any aspect of his conviction
4 and sentence imposed by the Court in the instant case (1:20-CR-2018-SAB) and in his
5 pending supervised release revocation case (1:15-CR-02037-LRS). Defendant may,
6 however, seek to appeal an order of restitution if it exceeds \$10,000. Furthermore, the
7 Defendant expressly waives his right to file any post-conviction motion attacking his
8 conviction and sentence, including a motion pursuant to 28 U.S.C. § 2255, except one
9 based upon ineffective assistance of counsel based on information not now known by
10 Defendant and which, in the exercise of due diligence, could not be known by Defendant
11 by the time the Court imposes the sentence.

12 The Defendant acknowledges that this waiver shall result in the dismissal of any
13 appeal or collateral attack the defendant might file challenging the conviction or sentence
14 in this case, except for ineffective assistance of counsel as noted above. If the Defendant
15 files a notice of appeal, a habeas petition, or other collateral attack, notwithstanding this
16 agreement, the Defendant agrees that this case shall, upon motion of the government, be
17 remanded to the district court to determine whether Defendant is in breach of this
18 agreement and, if so, to permit the government to withdraw from the Plea Agreement.

19 22. Waiver of Inadmissibility of Statements:

20 The Defendant agrees to waive the inadmissibility of statements made in the
21 course of plea discussions with the United States, pursuant to Fed. R. Crim. P. 11(f).
22 This waiver shall apply if the Defendant withdraws this guilty plea or breaches this Plea
23 Agreement. The Defendant acknowledges that any statements made by the Defendant to
24 law enforcement agents in the course of plea discussions in this case would be admissible
25 against the Defendant in the United States' case-in-chief if the Defendant were to
26 withdraw or breach this Plea Agreement.

27 23. Integration Clause:

28 The United States and the Defendant acknowledge that this document constitutes

the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state or local authorities. The United States and the Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

William D. Hyslop
United States Attorney

s/ Ian Garriques
Ian L. Garriques
Assistant United States Attorney

7/29/2020
Date

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement, and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

/s/ Fernando Gustavo Castaneda-Sandoval
Fernando Gustavo Castaneda-Sandoval
Defendant

7-29-20
Date

I certify Fernando Castaneda authorized my signature on his behalf.
/s/ Alex B. Hernandez
Attorney
7-29-20

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set

1 forth in the Plea Agreement. There is no legal reason why the Court should not accept the
2 Defendant's plea of guilty.

3
4 /s/ Alex B. Hernandez III
Alex B. Hernandez III
Attorney for the Defendant

7-29-20
Date